

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KRISTEN YOUNG-FITCH,

Plaintiff,

v.

**CAROLYN W. COLVIN, Acting
Commissioner of Social Security,**

Defendant.

No. 1:12-cv-00740-JE

OPINION AND ORDER

MOSMAN, J.,

On June 18th, 2013, Magistrate Judge Jelderks issued his Findings and Recommendation (“F&R”) [18] in the above-captioned case, recommending that the Commissioner’s final decision be affirmed and that this action be dismissed with prejudice. Plaintiff objected [20], and defendant responded [22].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. I am not bound by the recommendations of the magistrate judge; instead, I retain responsibility for making the final determination. I am required to review de novo those portions of the report or any specified findings or recommendations within it to which an objection is made. 28 U.S.C. § 636(b)(1). However, I am not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those

portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether objections have been filed, in either case I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1).

Upon review, I agree with Judge Jelderks's recommendation, and I ADOPT the F&R [18] as my own opinion. I write further to address plaintiff's argument that the Administrative Law Judge ("ALJ") erred in failing to discuss Dr. O'Connell's assessment that plaintiff's visual processing speed is extremely low. (Plaintiff's Objections to F&R [20] at 2.) Plaintiff correctly observes that an ALJ's failure to consider an examining physician's opinion when reaching a disability determination is legal error. *Smolen v. Chater*, 80 F.3d 1273, 1286 (9th Cir. 1996). However, the results of Dr. O'Connell's visual processing tests are not themselves an "opinion," but merely part of the data informing Dr. O'Connell's conclusions. (Dr. O'Connell's Assessment [9-20] at 11-13.) The ALJ considered these conclusions extensively, agreed with many of them, and, as Judge Jelderks noted, gave clear and convincing reasons for rejecting the rest. (ALJ's Decision [9-3] at 20-21; F&R [18] at 22.) To accept plaintiff's argument would be to turn each declaratory statement in a physician's report into an "opinion" that an ALJ must separately discuss. This is too onerous a burden.

IT IS SO ORDERED.

DATED this 11th day of September, 2013.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge